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No. 90-615

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

RAFAEL PERETZ,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED OCTOBER 10, 1990
CERTIORARI GRANTED JANUARY 22, 1991

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The following opinion and order have been omitted in printing in the joint appendix. They appear in the appendix to the printed petition for certiorari:	
Opinion of the United States Court of Appeals for the Second Circuit, April 23, 1990	
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RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
District Court Proceedings	
(Docket No. 88 Cr. 434 (CPS))	
7/13/88	Magistrate complaint filed and defendants arraigned.
7/25/88	Indictment filed.
8/8/88	Defendants Peretz and Slavska-Szulejkl arraigned on indictment.
10/14/88	Status conference before District Judge Sifton. Jury selection scheduled before a magistrate.
1/6/89	Jury selection held before Magistrate Amon.
1/11/89	Jury sworn and trial begins before District Judge Sifton.
1/20/89	Trial ends with jury verdict of guilty as to defendant Peretz and not guilty as to defendant Slavska-Szulejkl.
9/28/89	Defendant Peretz sentenced by District Court.
10/5/89	Notice of Appeal filed.
10/18/89	Judgment of conviction and sentence docketed.
Court of Appeals Proceedings	
(Docket No. 89-1543)	
3/27/90	Oral argument.
4/23/90	Convictions affirmed.
7/11/90	Petition for rehearing denied.

[1] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CR 88 434

UNITED STATES OF AMERICA,

-against-

RAFAEL PERETZ and MARGARET STLAVSKA-SZULEJKO,
Defendant.

United States Courthouse
Brooklyn, New York

October 14, 1988

TRANSCRIPT OF STATUS
BEFORE THE HONORABLE CHARLES P. SIFTON
UNITED STATES DISTRICT JUDGE

* * * *

[6] THE COURT: During the week of the 24th. We'll pick a jury—

MR. BREITBART: You said the 22nd.

THE COURT: The 24th.

Is that—

MR. BREITBART: It's okay with me.

MR. LOPEZ: October 24 and 25 is going to be difficult for me but Thursday and Friday is okay with me.

THE COURT: Let's try to pick a jury Thursday morning. Any objection to picking the jury before a magistrate?

MR. BREITBART: I would love the opportunity.

THE COURT: Thank you very much.

MR. BREITBART: That is for jury selection and trial either immediately or next week on Thursday and Friday.

MR. BREITBART: Has Mr. Belkin consummated.

THE COURT: We've been proceeding without a government lawyer.

MR. BREITBART: I thought you knew.

THE COURT: If we can't go we will to over and try to finish it up the next week.

* * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[Caption Omitted in Printing]

December 2, 1988

[January 6, 1989]

**TRANSCRIPT OF JURY SELECTION,
BEFORE THE HONORABLE CAROL B. AMON,
UNITED STATES DISTRICT MAGISTRATE**

* * * *

[2] THE CLERK: Criminal cause for jury selection, The United States of America v. Rafael Peretz.

MR. BELKIN: Ira Belkin, for the Government.

MR. BREITBART: David Breitbart for the defendant Rafael Peretz.

MR. LOPEZ: Frank Lopez, for the defendant Margaret Slavska Szulejko.

THE COURT: Please be seated.

Are you ladies and gentlemen ready for jury selection?

MR. BELKIN: Yes, your Honor.

THE COURT: Now, I have the first named defendant Rafael Peretz; is that correct, the correct pronounciation, Mr. Breitbart?

MR. BREITBART: Yes, your Honor.

THE COURT: And Mr. Lopez, you are going to have to help me with the name of your client.

MR. LOPEZ: Margaret Szulejko.

THE COURT: You are prepared to proceed, Mr. Breitbart?

MR. BREITBART: Yes, your Honor.

THE COURT: Mr. Breitbart, I have the consent of your client to proceed with the jury selection?

MR. BREITBART: Yes, your Honor.

THE COURT: And Mr. Lopez, do I have the consent [3] of your client to proceed?

MR. LOPEZ: Yes, your Honor.

MR. BREITBART: We would ask until we have an opportunity to speak to Judge Sifton but we may be trying this case on Thursday and Friday and I think it is a fairly important consideration, discussing it with the jury.

THE COURT: Let me explain what my understanding is and then we'll discuss it. I have been told by Judge Sifton it will be a few days a week on Thursday and Friday. That's all day Thursday and Friday. It was to begin on January 12, at 9:30.

Now, you say that there is a possibility it will begin when?

* * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[Caption Omitted in Printing]

January 11, 1989

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE CHARLES P. SIFTON
UNITED STATES DISTRICT JUDGE

* * * *

[2] THE CLERK: Criminal cause on trial, United States versus Rafael Peretz and Margaret Slavska-Szulejko.

THE COURT: Would you swear the interpreters.

(RUTH KOHN, sworn to interpret Polish into English)

(EMANUEL SMIKUN, sworn to interpret Hebrew into English)

THE COURT: What happened here, Mr. Breitbart? 16 jurors and a lot of lawyers have been waiting for you for over a half an hour.

MR. BREITBART: There is no [ex]cuse, judge, it was just a misinterpretation. I was under the impression it was a 10:00 o'clock call.

THE COURT: Nobody else seems to have made that mistake. I think you better attend a little more carefully the next time because it has pretty severe consequences for a lot of people on the first day of trial to have all the jurors get here on time and then just sit waiting.

MR. BREITBART: It won't happen again, judge.

(Brief pause.)

THE COURT: While we're waiting for the defendants, what are the outstanding matters? I'm aware of the motion to surpress statements that you've made. The government has made an in limin[e] motion with regard to the statements made by Miss Slavska-Szulejko, if I'm pronouncing her name correctly, and there is also a severance application which I assume has been resolved because of the government's proposed redaction [3] of statements. Is there anything else?

MR. BREITBART: There is the question, depending upon the decision on the motion to surpress the statement, there is the Bruton issue as to what can in fact be offered because both of the defendants are going to trial at the same time. There are statements—

THE COURT: I thought that that had been resolved by a proposed redaction of Mr. Peretz's statement. If I'm wrong about that, you can tell me.

MR. BREITBART: The government had proposed—

THE COURT: Now that the defendants are here, the interpreters have been previously sworn, Mr. Peretz, do you want to tell us if you are able to follow the interpreter.

We're late in getting going because one of the participants was delayed in getting here. We're ready to start now. The jury is here ready to try the case. There are, as we were just discussing while waiting for you to come up, a number of pending applications which require resolution and I was just going over them to make sure I was aware of everything that is still unresolved. The first question is the admissibility of statements alleged to have been made by Mr. Peretz at the time of and subsequent to his arrest. The second matter was an in limin[e] application, that is a pretrial application for a ruling on the use of Miss Slavska-Szulejko's post-arrest statements; and finally, there [4] is an application for a severance of the trial of the two defendants which I just

said I thought had been resolved by the government's proposal to redact a portion of Mr. Peretz's statement to omit any reference to his co-defendant.

Is there anything else that anyone thinks is pending or any difference as to what is pending?

Mr. Breitbart, is there anything else that you think is pending?

MR. BREITBART: No, judge except that there was never any agreement, we were waiting for a ruling on the Bruton thing. I know there had been a proposal but there was never a determination.

THE COURT: Sorry, I thought that since there was no response, that that was agreeable to both sides.

All right, with regard to the post-arrest statements of Mr. Peretz, I've heard the evidence at the pretrial hearing and considered the arguments that you've made. It seems to me that the statements are voluntary and made with full understanding of the constitutional protections and after a waiver of those protections by Mr. Peretz.

So I'm going to deny the application to su[p]press the statements that were made. The first of those statements appears to me to have been a volunteered statement that was voluntarily and not coerced and prior to the time when a warning was required from the arresting agents. [5] The other statements, the lengthy narrative statements given by Mr. Peretz explaining his presence and his involvement in the situation which led to his arrest appear to me to evidence an intelligent understanding of the situation after a warning.

Mr. Peretz appears to me sufficiently well acquainted with the English language and sufficiently mature to have appreciated what was being said to him and to have decided on the best course of action which was to seek to persuade arresting agents that he should be released, and under the circumstances, it doesn't seem to me that the decision of the government to use those statements against him in a criminal prosecution should relieve him of the waiver, a knowing and intelligent waiver of his constitutional rights.

With regard to the in limin[e] application of the government to rule that Miss Slavska-Szulejko's post-arrest statements not be brought out by the defendants on cross-examination or on the defense case, since I can't articipate every circumstance in which questions along the line, on that subject might come up, I don't find it possible to rule definitively that under no circumstances may those statements be inquired into, however, as a general matter, the offer of those statements to prove the truth of what Miss Slavska-Szulejko was saying, a use of them, that in general is prohibited under the hearsay rules unless something about the [6] circumstances under which they are uttered or the subject that they cover bring it within one of the exceptions to the hearsay rule.

So before any inquiry is made into the contents of those statements, I'll ask that counsel, that the defendants alert me to the fact that they intend to make the inquiry and I'll rule on the matter at the time the inquiry is made.

With regard to the application by Miss Slavska-Szulejko for a severance from Mr. Peretz, is the redaction of Mr. Peretz's statement that is proposed by the government adequate as a method of curing the situation calling for a severance?

MR. BREITBART: I'm having trouble finding that document offered by the government.

THE COURT: It's a letter of October 20th. If you'd like the original, I have it here.

In any event, it's the situation in which Miss Slavska-Szulejko is interested in, not Mr. Peretz.

Mr. Lopez, any problem with the redaction that is proposed?

MR. LOPEZ: No, there is no problem with that, your Honor.

THE COURT: All right, then can we proceed with this jury which has been waiting for some period of time.

Swear them in and get started.

(Jury in at 10:25)

SUPREME COURT OF THE UNITED STATES

No. 90-615

RAFAEL PERETZ,

Petitioner

v.

UNITED STATES

ORDER ALLOWING CERTIORARI

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted limited to the following questions: 1. Does 28 U.S.C., Section 636, permit a magistrate to conduct the voir dire in a felony trial if the defendant consents? 2. If 28 U.S.C., Section 636, permits a magistrate to conduct a felony trial voir dire provided that the defendant consents, is the statute consistent with Article III? 3. If the magistrate's supervision of the voir dire in petitioner's trial was error, did the conduct of petitioner and his attorney constitute a waiver of the right to raise this error on appeal?

January 22, 1991

SUPREME COURT OF THE UNITED STATES

No. 90-615

RAFAEL PERETZ,

Petitioner

v.

UNITED STATES

ON CONSIDERATION of the motion of petitioner for leave to proceed further herein in forma pauperis,

IT IS ORDERED by this Court that the said motion, be, and the same is hereby, granted.

February 25, 1991